

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

In the Matter of)
COMTRAD INDUSTRIES, INC.,)
a corporation.) FILE NO. 962-3047
AGREEMENT CONTAINING
CONSENT ORDER)
)

The Federal Trade Commission has conducted an investigation of certain acts and practices of Comtrad Industries, Inc., a corporation ("proposed respondent"). Proposed respondent, having been represented by counsel, is willing to enter into an agreement containing a consent order resolving the allegations contained in the attached draft complaint. Therefore,

IT IS HEREBY AGREED by and between Comtrad Industries, Inc., by its duly authorized officer, and its attorneys, and counsel for the Federal Trade Commission, that:

1. Proposed respondent Comtrad Industries, Inc. is a Virginia corporation with its principal office or place of business at 2820 Waterford Lake Drive, Suite 106, Midlothian, Virginia 23113.
2. Proposed respondent admits all the jurisdictional facts set forth in the draft complaint.
3. Proposed respondent waives:
 - a. Any further procedural steps;
 - b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and
 - c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission.

If this agreement is accepted by the Commission, it, together with the draft complaint, will be placed on the public record for a period of sixty (60) days and information about it publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft complaint, or that the facts as alleged in the draft complaint, other than the jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the attached draft complaint and its decision containing the following order in disposition of the proceeding, and (2) make information about it public. When so entered, the order shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery of the complaint and the decision and order to proposed respondent by any means specified in Section 4.4 of the Commission's Rules shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order. No agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the draft complaint and consent order. It understands that it may be liable for civil penalties in the amount provided by law and other appropriate relief for each violation of the order after it becomes final.

ORDER

DEFINITIONS

For purposes of this order, the following definitions shall apply:

1. "Competent and reliable scientific evidence" shall mean tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.
2. "Clearly and prominently" shall mean as follows:
 - A. In a television or video advertisement, the disclosure shall be presented simultaneously in both the audio and video portions of the advertisement. The audio disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it. The video disclosure shall be of a size and shade, and shall appear on the screen for a duration, sufficient for an ordinary consumer to read and comprehend it.
 - B. In a radio advertisement, the disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it.
 - C. In a print advertisement, the disclosure shall be in a type size, and in a location, that are sufficiently noticeable so that an ordinary consumer will see and read it, in print that contrasts with the background against which it appears. In multi-page documents, the disclosure shall appear on the cover or first page.
 - D. In an advertisement on any electronic media received by consumers via computer, such as the Internet's World Wide Web or commercial on-line computer services, the disclosure shall be in a type size, and in a location, that are sufficiently noticeable so that an ordinary consumer will see and read it, in print that contrasts with the background against which it appears. In multi-screen documents, the disclosure shall appear on the first screen and on any screen containing ordering information.
 - E. On a product label, the disclosure shall be in a type size, and in a location on the principal display panel,

that are sufficiently noticeable so that an ordinary consumer will see and read it, in print that contrasts with the background against which it appears.

Nothing contrary to, inconsistent with, or in mitigation of the disclosure shall be used in any advertisement or on any label.

3. Unless otherwise specified, "respondent" shall mean Comtrad Industries, Inc., a corporation, its successors and assigns, and its officers, agents, representatives and employees.

4. "In or affecting commerce" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C.

IT IS FURTHER ORDERED that respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any product for use in the storage of food, in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, about the benefits, performance, efficacy, or safety of such product, unless, at the time the representation is made, respondent possesses and relies upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates the representation.

III.

IT IS FURTHER ORDERED that respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of the Koolatron or any substantially similar product in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, about the cooling capacity of such product, or about the effectiveness, usefulness, or appropriateness of such product for refrigerating or cooling food items, or for holding food items at a cool temperature, unless it discloses, clearly and prominently, and in close proximity to the representation, that such product may not keep perishable food items, such as meat, poultry, and fish, sufficiently cold to prevent the growth of bacteria when the surrounding outside temperature is greater than 80 degrees Fahrenheit, including when such product is used in hot weather, in direct sunlight, or in a hot car, and that use of such product in these circumstances poses a risk of buildup of harmful or unsafe bacteria and could lead to food-borne illness.

IV.

IT IS FURTHER ORDERED that respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of the Koolatron or any substantially similar product in or affecting commerce, shall not make any representation, in any manner, expressly or by implication, about the effectiveness, usefulness, or appropriateness of such product for heating or warming food items, or for holding food items at a warm temperature, unless it discloses, clearly and prominently, and in close proximity to the representation, that heating, warming, or holding perishable food

items such as meat, poultry, and fish in such product in its warming mode may pose a risk of buildup of harmful or unsafe bacteria and could lead to food-borne illness.

V.

IT IS FURTHER ORDERED that respondent Comtrad Industries, Inc. and its successors and assigns shall, for five (5) years after the last date of dissemination of any representation covered by this order, maintain and upon request make available to the Federal Trade Commission for inspection and copying:

- A. All advertisements and promotional materials containing the representation;
- B. All materials that were relied upon in disseminating the representation; and
- C. All tests, reports, studies, surveys, demonstrations, or other evidence in its possession or control that contradict, qualify, or call into question the representation, or the basis relied upon for the representation, including complaints and other communications with consumers or with governmental or consumer protection organizations.

VI.

IT IS FURTHER ORDERED that respondent Comtrad Industries, Inc. and its successors and assigns shall deliver a copy of this order to all current and future principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities with respect to the subject matter of this order, and shall secure from each such

under this order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. Provided, however, that, with respect to any proposed change in the corporation about which respondent learns less than thirty (30) days prior to the date such action is to take place, respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580.

VIII.

IT IS FURTHER ORDERED that respondent Comtrad Industries, Inc. and its successors and assigns shall, within sixty (60) days after the date of service of this order, and at such other times as the Federal Trade Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

IX.

This order will terminate twenty (20) years from the date of its issuance, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

- A. Any Part in this order that terminates in less than twenty (20) years;
- B. This order's application to any respondent that is not named as a defendant in such complaint; and
- C. This order if such complaint is filed after the order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate

according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

Signed this _____ day of _____, 19__

COMTRAD INDUSTRIES, INC.

By: CHARLES ANTON
President

JAMES E. MOORE
Christian, Barton, Epps,
Brent & Chappell
Attorney for respondent

JOHN T. DUGAN
Counsel for the Federal Trade
Commission

APPROVED:

PHOEBE D. MORSE
Director
Boston Regional Office

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

In the Matter of)
COMTRAD INDUSTRIES, INC.,) DOCKET NO.
a corporation.)
_____)

COMPLAINT

The Federal Trade Commission, having reason to believe that Comtrad Industries, Inc., a corporation ("respondent"), has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Comtrad Industries, Inc. is a Virginia corporation with its principal office or place of business at 2820 Waterford Lake Drive, Suite 106, Midlothian, Virginia 23113.
2. Respondent has advertised, offered for sale, sold, and distributed products to the public through print advertisements and through the Internet 's World Wide Web, including the Koolatron, a portable electronic food cooler and warmer also known as a thermo-electric cooler.
3. The acts and practices of respondent alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.
4. Respondent has disseminated or has caused to be disseminated advertisements and promotional materials for the Koolatron, including but not necessarily limited to the attached Exhibits A and B. These advertisements and promotional materials contain the following statements:

- A. "500 miles from nowhere, it'll give you a cold drink or a warm burger . . .

NASA space flights inspired this portable fridge that outperforms conventional fridges, replaces the ice chest and alternates as a food warmer.

Recognize the ice cooler in this picture? Surprisingly enough, there isn't one. What you see is a Koolatron, an invention that replaces the traditional ice cooler,

"Hot or cold. With the switch of a plug, the Koolatron becomes a food warmer for a casserole, burger or baby 's bottle. It can go up to 125 degrees. "

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"Just load it up and plug it in. On motor trips, plug your Koolatron into your cigarette lighter; it will use less power than a taillight. If you decide to carry it to a picnic place or a fishing hole, the Koolatron will hold its cooling capacity for 24 hours. If you leave it plugged into your battery with the engine off, it consumes only three amps of power. "

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(Exhibit A).

- B. **"Technology combines the dependable cooling power of a refrigerator with the convenience of a cooler . . . heats food too!**

Remarkable new portable cooler/warmer reduces the outside temperature by up to 40 degrees and heat[s] up to 125 degrees!"

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Imagine the versatility and convenience of a cooler that worked like a refrigerator. You could have ice-cold drinks at softball games, enjoy a picnic without soggy or spoiled food, even store insulin or other medicine that needs to be refrigerated. You could take it along when traveling and avoid the long lines and high prices of rest areas and interstate restaurants.

Now, imagine that this cooler that worked like a refrigerator could also *heat* food. You could warm baby formula or enjoy warm drinks at football games, camping, hunting or anywhere else. Sound like a dream? It's not -- the Koolatron cooler/warmer does it all. "

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"Hot or cold.

the switch of a plug, Koolatron goes from a refrigerator to a food warmer, going up to 125 degrees. **Just plug it in.** Koolatron plugs directly into your vehicle's cigarette lighter and uses less power than a taillight. If you leave it plugged in while the vehicle is off, it will consume only three amps of power. Unplugged, Koolatron will hold its cooling capacity for up to 24 hours. "

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"Modern solution. Home refrigeration has come a long way from the "ice box" of the 1920s. But when we travel, we revert to similar methods and sloppy or spoiled food. Now, . . . the advantages of home refrigeration are available to you electronically. "

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(Exhibit B).

5. Through the means described in Paragraph 4, respondent has represented, expressly or by implication, that:

- A. The Koolatron is as effective at cooling food items and medicines as a home refrigerator.
- B. The Koolatron will effectively cool down warm items and heat up cold items.
- C. Once unplugged from a power source, the Koolatron will hold its cooling capacity for 24 hours.
- D. Operating the Koolatron off a car battery when the car is not running will result in only a minimal power drain off the car 's battery.

6. In truth and in fact:

- A. The Koolatron is not as effective at cooling food items and medicines as a home refrigerator. Among other reasons, the Koolatron 's internal cold storage temperature is highly dependent on outside air or room temperatures, and in many circumstances it will not maintain internal cold storage temperatures comparable to a home refrigerator.
- B. The Koolatron will not effectively cool down warm items or heat up cold items. The Koolatron is primarily designed to maintain the cool or warm temperatures of items that were already cool or warm before being placed in the Koolatron. It may take up to twelve hours or more for the Koolatron to cool down a warm item or heat up a cold item.
- C. In most instances, once unplugged from a power source, the Koolatron will not hold its cooling capacity for 24 hours.
- D. Operating the Koolatron off a car battery when the car is not running does not result in a minimal power drain off the car 's battery. Use of the Koolatron in this manner may drain the car battery of all power in as little as three hours.

Therefore, the representations set forth in Paragraph 5 were, and are, false or misleading.

7. Through the means described in Paragraph 4, respondent has represented, expressly or by implication, that it possessed and relied upon a reasonable basis that substantiated the representations set forth in Paragraph 5, at the time the representations were made.

8. In truth and in fact, respondent did not possess and rely upon a reasonable basis that substantiated the representations set forth in Paragraph 5, at the time the representations were made. Therefore, the representation set forth in Paragraph 7 was, and is, false or misleading.

9. In its advertising and sale of the Koolatron, respondent has represented that the Koolatron is effective, useful, or appropriate for refrigerating or cooling food items, or for holding food items at a cool temperature, including in a wide variety of outdoor settings. Respondent has failed to disclose that the Koolatron may not keep perishable food items, such as meat, poultry, and fish, sufficiently cold to prevent the growth of bacteria when the surrounding outside temperature is greater than 80 degrees Fahrenheit, including when the Koolatron is used in hot weather, in direct sunlight, or in a hot car. Use of the Koolatron in such circumstances poses a risk of buildup of harmful or unsafe bacteria and could lead to food-borne illness. These facts would be material to consumers in their purchase or use of the product. The failure to disclose these facts, in light of the representations made, was, and is, a deceptive practice.

10. In its advertising and sale of the Koolatron, respondent has represented that the Koolatron is effective, useful, or appropriate for heating or warming food items, or for holding food items at a warm temperature. Respondent has failed to disclose that, because the Koolatron 's maximum internal heating temperature of 125 degrees Fahrenheit is not high enough to kill or prevent the growth of certain bacteria in perishable food items such as meat, poultry, and fish, holding perishable food in the Koolatron in its warming mode poses a risk of buildup of harmful or unsafe bacteria and could lead to food-borne illness. These facts would be material to consumers in their purchase or use of the product. The failure to disclose these facts, in light of the representations made, was, and is, a deceptive practice.

11. The acts and practices of respondent as alleged in this complaint constitute unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

THEREFORE, the Federal Trade Commission this day
of , 1996, has issued this complaint against respondent.

By the Commission.

Donald S. Clark
Secretary

SEAL:

[Exhibits A-B attached to paper copies of the complaint, but not available in electronic form.]

ANALYSIS OF PROPOSED CONSENT ORDER TO AID PUBLIC COMMENT

The Federal Trade Commission has accepted an agreement to a proposed consent order from Comtrad Industries, Inc. The proposed respondent is a marketer of "Koolatron," a portable electronic food cooler that doubles as a food warmer.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement~~s~~ proposed order.

The Commission's complaint charges that the proposed respondent made the following false and unsubstantiated representations about Koolatron: (1) Koolatron is as effective at cooling food items and medicines as a home refrigerator; (2) Koolatron will effectively cool down warm items and heat up cold items; (3) once unplugged from a power source, Koolatron will hold its cooling capacity for 24 hours; and (4) operating Koolatron off a car battery when the car is not running will result in only a minimal drain off the ~~car~~ battery. The complaint also charges that the proposed respondents represented that Koolatron is effective, useful, or appropriate for cooling or heating food items, but failed to disclose that in some circumstances Koolatron may not keep perishable food items sufficiently cold to prevent the growth of harmful bacteria on the food, or that Koolatron's maximum internal heating temperature is not high enough to kill or prevent the growth of certain harmful bacteria on perishable food items.

The proposed consent order contains provisions designed to remedy the violations charged and to prevent proposed respondent from engaging in similar acts in the future.

Part I of the proposed order, in connection with any product for use in the storage of food, prohibits the proposed respondent from misrepresenting: (1) the comparative or absolute ability of such product to refrigerate or cool food items or medicines or to maintain proper cold storage temperatures; (2) the comparative or absolute ability of such product to heat or warm food items; (3) the comparative or absolute ability of such product to hold its cooling capacity after being unplugged from a power source; or (4) the effect of operating such product off a car battery when the car is not running, including the amount of power used by the product in such circumstances or the potential for such use to drain the car battery of all power. Part II, in connection with any product for use in the storage of food, prohibits any representation about the benefits, performance, efficacy, or safety of such product, unless proposed respondent possesses and relies upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates the representation.

Part III of the proposed order, in connection with Koolatron or any substantially similar product, prohibits any representation about the effectiveness, usefulness, or appropriateness of such product for cooling food items, unless proposed respondent also discloses that such product

may not keep perishable food items sufficiently cold in some circumstances to prevent the growth of harmful bacteria on the food. Part IV of the proposed order, in connection with Koolatron or any substantially similar product, prohibits any representation about the effectiveness, usefulness, or appropriateness of such product for heating or warming food items, unless proposed respondent also discloses that use of the product for such purposes may pose a risk of buildup of harmful bacteria on the food.

The proposed order (Part V) contains record keeping requirements for materials that substantiate, qualify, or contradict covered claims and requires the proposed respondent to keep and maintain all advertisements and promotional materials containing any representation covered by the proposed order. In addition, the proposed order (Part VI) requires distribution of a copy of the consent decree to current and future officers and agents.